

House Study Bill 64 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ANDERSON)

A BILL FOR

1 An Act relating to the discovery of privileged medical records,
2 including mental health records, in a criminal case and
3 including effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 228.6, subsection 4, Code 2011, is
2 amended to read as follows:

3 4. a. Mental health information may be disclosed in a civil
4 or administrative proceeding in which an individual eighteen
5 years of age or older or an individual's legal representative
6 or, in the case of a deceased individual, a party claiming or
7 defending through a beneficiary of the individual, offers the
8 individual's mental or emotional condition as an element of a
9 claim or a defense.

10 b. Mental health information may be disclosed in a criminal
11 proceeding pursuant to section 622.10, subsection 3A.

12 Sec. 2. Section 622.10, Code 2011, is amended by adding the
13 following new subsection:

14 NEW SUBSECTION. 3A. a. Except as otherwise provided in
15 this subsection, the confidentiality privilege under this
16 section shall be absolute with regard to a criminal action and
17 this section shall not be construed to authorize or require
18 the disclosure of any privileged records to a defendant in a
19 criminal action unless either of the following occur:

20 (1) The privilege holder voluntarily waives the
21 confidentiality privilege.

22 (2) (a) The defendant seeking access to privileged records
23 under this section files a motion demonstrating in good faith a
24 reasonable probability that the information sought is likely
25 to contain exculpatory information that is not available from
26 any other source and for which there is a compelling need for
27 the defendant to present a defense in the case. Such a motion
28 shall be filed not later than forty days after arraignment
29 under seal of the court.

30 (b) Upon a showing of a reasonable probability that the
31 privileged records sought may likely contain exculpatory
32 information that is not available from any other source, the
33 court shall conduct an in camera review of such records to
34 determine whether exculpatory information is contained in such
35 records.

1 (c) If exculpatory information is contained in such
2 records, the court shall balance the need to disclose such
3 information against the privacy interest of the privilege
4 holder.

5 (d) Upon the court's determination, in writing, that the
6 privileged information sought is exculpatory and that there
7 is a compelling need for such information that outweighs the
8 privacy interests of the privilege holder, the court shall
9 issue an order allowing the disclosure of only those portions
10 of the records that contain the exculpatory information. The
11 court's order shall also prohibit any further dissemination
12 of the information to any person, other than the defendant,
13 the defendant's attorney, and the prosecutor, unless otherwise
14 authorized by the court.

15 b. Privileged information obtained by any means other than
16 as provided in paragraph "a" shall not be admissible in any
17 criminal action.

18 Sec. 3. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
19 immediate importance, takes effect upon enactment.

20 EXPLANATION

21 This bill relates to the discovery of privileged medical
22 records, including mental health records, in a criminal case
23 and includes effective date provisions.

24 Under Iowa Code section 622.10, certain health care
25 professionals, including mental health professionals,
26 are prohibited, in giving testimony, from disclosing any
27 confidential communication that occurs between the health care
28 professional and a patient during the course of the patient's
29 course of treatment. In State v. Cashen, 789 N.W.2d 400
30 (2010), the Iowa Supreme Court set forth certain protocol that
31 must be followed to balance a patient's right to privacy with
32 a defendant's right to present evidence to a jury that might
33 influence the jury's determination of guilt if privileged
34 mental health records are made available in a criminal
35 proceeding.

1 The bill amends Code section 622.10 to provide that,
2 except as otherwise provided in the bill, the confidentiality
3 privilege under Code section 622.10 shall be absolute in
4 relation to a criminal action and that the bill shall not
5 be construed to authorize or require the disclosure of
6 any privileged records to a defendant in a criminal action
7 unless either the privilege holder voluntarily waives the
8 confidentiality privilege or the defendant seeking access to
9 privileged records files a motion demonstrating in good faith a
10 reasonable probability that the information sought is likely to
11 contain exculpatory information that is not available from any
12 other source and for which there is a compelling need for the
13 defendant to present a defense in the case.

14 The bill provides that if the defendant files such a motion,
15 the court shall conduct an in camera review of such records
16 to determine whether exculpatory information is contained in
17 such records upon a showing of a reasonable probability that
18 the privileged records sought may likely contain exculpatory
19 information that is not available from any other source. If
20 exculpatory information is contained in such records, the court
21 is required to balance the need to disclose such information
22 against the privacy interest of the privilege holder. If
23 the court determines that the privileged information sought
24 is exculpatory and that there is a compelling need for such
25 information that outweighs the privacy interests of the
26 privilege holder, the court shall issue an order allowing the
27 disclosure of only those portions of the records that contain
28 the exculpatory information. The court's order shall also
29 prohibit any further dissemination of the information to any
30 person, other than the defendant, the defendant's attorney,
31 and the prosecutor, unless otherwise authorized by the court.
32 The bill provides that privileged information obtained by any
33 means other than as provided in the bill is not admissible in
34 a criminal action.

35 The bill makes a conforming amendment to Code section 228.6

H.F. _____

1 relating to the compulsory disclosure of mental health and
2 psychological information.

3 The bill takes effect upon enactment.